

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

STAFF REPORT FOR REGULAR MEETING OF July 31 - August 1, 2014

Prepared on July 17, 2014

ITEM NUMBER: 13

SUBJECT: Irrigated Lands Regulatory Program: Water Board Review of Central Coast Groundwater Coalition's Drinking Water Notification Process

STAFF CONTACT: Hector Hernandez 805/542-4641 or
hector.hernandez@waterboards.ca.gov

KEY INFORMATION:

Location: Region-Wide
Type of Discharge: Irrigated Lands Runoff and Leaching To Groundwater
Existing Orders: Order No. RB3-2012-0011 and WQ 2013-0101

THIS ACTION: Board Review Regarding the Central Coast Groundwater Coalition's Disclosure of Individual Notification Letters and Individual Follow-Up Action Information.

ITEM ORGANIZATION/PREAMBLE

This staff report summarizes the issues and differing views among interested parties regarding whether the Central Coast Groundwater Coalition (Coalition) must provide the Central Coast Regional Water Quality Control Board (Central Coast Water Board) with copies of notification letters their members send to users notifying them that the drinking water wells they are using exceed the nitrate drinking water standard. This staff report is broken up into two sections, 13A and 13B, due to two different proceedings on this topic. Although the staff report is separated into the two sections in order to respond to both the Coalition and California Rural Legal Assistance (CRLA), this issue is being heard as one item. The Central Coast Water Board will hear from staff, the Coalition, CRLA, and interested persons and may uphold the approved work plan or modify the approved work plan's requirements regarding the notification letters.

At the January 30, 2014 Central Coast Water Board meeting, the Central Coast Water Board directed staff to work with the Coalition to align the Drinking Water Notification processes to verify notification of individuals (current and future) dependent on domestic wells that exceed the nitrate drinking water standard. The first portion of this is staff report, referenced as 13A, covers the Central Coast Water Board's directive, Central Coast Water Board staff's subsequent actions and evaluation of the Coalition's response letter regarding aligning of drinking water notification processes.

On July 3, 2014, CRLA submitted a request for discretionary review by the Central Coast Water Board on 1) alignment of the Coalition's drinking water notification process with the Central Coast Water Board's individual monitoring notification process, and 2) making individual well information available (obscured to the one-half mile) on GeoTracker. CRLA's first discretionary review item, related to drinking water notification, would cover much of the same information related to 13A, and as such, Central Coast Water Board staff determined that hearing this in July as part of this item was the most efficient approach. Central Coast Water Board staff's

review and response to CRLA's letter are incorporated in this staff report in the portion referenced as 13B (starting on Page 14). The second portion of CRLA's request will be addressed at a future Central Coast Water Board meeting.

SUMMARY FOR 13A – ADDRESSING THE COALITION'S LETTER

The purpose of this item is to discuss aligning the Central Coast Groundwater Coalition's (Coalition) drinking water notification processes with the Central Coast Regional Water Quality Control Board's (Central Coast Water Board) process for growers with domestic well exceedances that conduct individual monitoring, in follow up to the Central Coast Water Board's direction at the January 30, 2014 meeting. Central Coast Water Board staff currently verifies notification and provision of replacement water with growers conducting individual groundwater monitoring for domestic wells that exceed the nitrate drinking water standard. In response to the Executive Officer's request for a proposal for aligning the Coalition's drinking water notification process, the Coalition submitted a June 10, 2014 response letter (**Attachment 1**) disagreeing with conditions of the Work Plan Approval letters issued to the Coalition by the Executive Officer on December 17, 2013 (for the Northern Counties) and December 18, 2013 (for the Southern Counties) (**Attachments 2 and 3**). The Coalition's response letter specifically objected to a requirement allowing the Executive Officer to request copies of grower-specific drinking water notification letters that the Coalition sends to their members if the members' domestic well exceeds the drinking water standard for nitrate, and presents a health risk to those who may be drinking or using the water. The Coalition's response letter outlines reasons and associated justification for not complying with the conditions stated in the Work Plan Approval Letters, and proposes follow-up actions in lieu of providing evidentiary-level information.

This staff report presents Central Coast Water Board staff's evaluation and recommendation concerning the Coalition's response letter and proposed follow up actions. Central Coast Water Board staff recommends **No change to existing Work Plan approval conditions, and to require the Coalition to make its reporting of drinking water exceedances and associated follow up equivalent to the Water Board's notification process for growers that conduct individual monitoring and have domestic well nitrate exceedances.** The rationale for staff's recommendation is included below.

DISCUSSION

First, Central Coast Water Board staff commends the accomplishments of the Coalition and its consultants in sampling and analyzing domestic and agricultural supply wells in groundwater basins throughout the region. The Coalition has achieved significant progress over the last sixteen months as it works towards meeting its members' regulatory obligations under the Agricultural Order, and complies with the approved work plans.

Background: At the Central Coast Water Board meeting on January 30, 2014, the Board directed staff to work with the Coalition to 1) verify that the Coalition's notification of maximum contaminant level (MCL) exceedances for drinking water wells and follow up actions and reporting are equivalent to the existing process for growers that conduct individual monitoring, 2) verify replacement water is being continuously provided and adequate, and 3) follow up with these locations to ensure adequacy through time as population/residency rates change.

To achieve these goals for growers conducting individual groundwater monitoring with domestic wells that exceed the drinking water nitrate MCL, Central Coast Water Board staff made minor revisions to the Drinking Water Notification (DWN) template letter (**Attachment 4**) that staff mail. The DWN letters outline:

- 1) Expectations for written notification to all users and well postings, indicating that water supply poses a human health risk, including notification for new users;
- 2) Provision of replacement water and verification that replacement water is provided to new users;
- 3) Written documentation to be submitted to the Central Coast Water Board as evidence of notification of users, posting of appropriate health notice, identification of contaminated well(s) and number of people served, and description of any treatment method or alternative drinking water supply provided (both long-term and short-term), as applicable.

The actions outlined above provide evidence (a written record) documenting that notification and replacement water actions are taking place. This record allows Central Coast Water Board staff to follow up with growers conducting individual groundwater monitoring with domestic wells that exceed the nitrate drinking water MCL to ensure proper notification, well posting, and replacement water continue to occur in the future and as residents change. The majority of these follow up components have been in place for approximately 18 months, although we have made some minor modifications through time. These follow up components are also consistent with Central Coast Water Board direction to staff at the January 2014 meeting. As of July 8, 2014, Central Coast Water Board staff has issued **102** drinking water well notification letters for **109** wells that exceed the nitrate MCL to growers that conduct individual groundwater monitoring. Of these, individual growers have provided documentation that notification of the well user has occurred in **100** cases and in **80** cases, replacement water has been provided (bottled or treatment). An additional 10 of these cases have indicated that they are looking to treatment, but did not indicate if they are providing replacement water in the interim. Central Coast Water Board staff greatly appreciate the efforts of these reporting growers to date, and will be following up with all of these cases to 1) ensure that human health is being protected (via either notification or well shut off), 2) monitor notification and replacement water conditions over time, and 3) determine the notification status of the remaining two cases.

On December 17, 2013 and December 18, 2013, the Central Coast Water Board issued conditioned Work Plan Approval letters (**Attachments 2 and 3**) to the Coalition, approving its Work Plans for the northern counties and southern counties, respectively. One of these approval conditions requires the Coalition to provide copies of letters associated with notification for drinking water wells that exceed the MCL, when requested by the Executive Officer. Although Coalition staff voiced discontent with this condition to Central Coast Water Board staff, the Coalition did not petition the approval within the petition window (approximately December 18, 2013 through January 18, 2014).

Central Coast Water Board staff also coordinated with the Coalition to assist in revisions to its notification and documentation process so that the process aligns as directed by the Central Coast Water Board, with the existing process for growers conducting individual monitoring. On March 21, 2014, the Central Coast Water Board sent a follow up letter to the Coalition (**Attachment 5**). The letter outlines expected notification process changes to ensure that the Coalition notification, documentation and reporting are aligned with the Central Coast Water Board's process for growers conducting individual groundwater monitoring. The letter also provides the supporting rationale for the requested changes to the Coalition drinking water notification process, including:

- Providing a written record documenting the Central Coast Water Board is protecting human health, the right to safe water, and the drinking water beneficial use;
- Enabling Central Coast Water Board staff ready access to information such that they can follow up on sites needing replacement water to determine ongoing sufficiency;

- Providing transparent credibility that both the Central Coast Water Board's and the Coalition's notification processes are documenting that timely notification and replacement water have occurred;
- Information provided by these records will assist Central Coast Water Board staff in identifying and informing domestic well users for wells that are not on properties enrolled under the Agricultural Order, nor tested, in areas where well water can be reasonably predicted to be unsafe; and
- Ensuring the Central Coast Water Board is not relying on anecdotal, aggregated, and/or anonymous information, however well intentioned, as the Central Coast Water Board cannot delegate its responsibility to maintain a written record, or its authority to protect public health, to a third party.

Subsequent to sending this letter, Central Coast Water Board staff communicated with Coalition staff multiple times to discuss and clarify our specific request, as outlined in the letter. As also noted in the letter, Central Coast Water Board staff appreciates the sensitivity of this issue, but the real public health risk component of this issue outweighs the desire for privacy.

The Coalition's Response Letter, Reasons for Disagreeing with the Approved Work Plan, and Water Board Staff Response:

1. In the June 10, 2014 letter (**Attachment 1**), the Coalition covers its accomplishments completed or in progress since its inception. The Coalition states its disagreement with the Central Coast Water Board's direction that reporting and notification requirements for members in a coalition must be equal to requirements imposed on individuals. The Coalition contends that the Central Coast Water Board's position is contrary to the State Water Resources Control Board's (State Board) stated reasons for supporting third-party, or coalition-type programs. It is the Coalition's position that the State Board does not mandate or imply that third-party reporting must be "equal" to that which is required for individuals.

Water Board Staff Response:

Central Coast Water Board staff agree with the Coalition that the State Board does not mandate reporting must be equal between Coalition growers and growers conducting individual monitoring. State Board has appropriately left this to the Central Coast Water Board and its Executive Officer, within his normal delegated authority (as is exercised in thousands of cases within the region in the various regulatory programs) to determine. Work plans are typically developed to establish the specifics of monitoring (i.e., specific analytical and sampling methods, specifics of what is reported and the content of what must be included in that reporting, etc.). Exercising normal delegated authority, the Executive Officer issued the Work Plan Approval letters with conditions as cited above in mid-December 2013. Additionally, The State Board clearly stated that third-party proposals must ensure "consistency with legal requirements to verify the adequacy and effectiveness of waiver conditions and provide sufficient feedback mechanisms for determination of whether the required controls are achieving the Agricultural Order's stated purposes."

Coalition comments:

2. The Coalition contends that providing individual notification letters is not required by the Agricultural Order or State Board's Order, or necessary for the Central Coast Water Board to ensure that the Agricultural Order's stated purposes are being achieved. The Coalition also states that such requirement will undermine the intent and purpose of a third-party program, and will provide no greater protection for water quality.

Water Board Staff Response:

As discussed above, details regarding what is specifically included within required groundwater monitoring reporting are typically outlined in either 1) approved work plans and/or conditioned work plan approval letters or 2) within Executive Officer-issued Monitoring and Reporting Programs (MRPs). In this case, many of the specifics associated with the Coalition's monitoring effort are detailed in its work plan and the aforementioned Work Plan Approval letters. Therefore, not seeing this requirement in either the Agricultural Order or the State Board's Order is consistent with normal practice.

The requirement for provision of information pertaining to notification is necessary, such that Central Coast Water Board staff can 1) establish that adequate actions have been taken to prevent human health exposures and 2) conduct follow up to evaluate replacement water adequacy through time. Third-party monitoring programs cannot exist solely for the protection of the members; rather, it must facilitate compliance for its members, consistent with prepared and approved work plans, and make information available such that those well users on properties not enrolled in the Coalition can determine if they are at risk. If the Coalition could not meet or abide by the requirements contained within the conditions of the Work Plan Approval letters, or believed them to be unreasonable, it could have requested that the Central Coast Water Board review these requirements, but it did not.

Providing notification letters creates evidentiary-level documentation (versus aggregated, anonymous results), in the form of a written record, and affords Central Coast Water Board staff the ability to follow up on sites to evaluate the adequacy of replacement water, well postings, etc. The State Water Board was clear in its order about not underserving the very serious health exposure issues related to unsafe drinking water from the discharge of nitrate to groundwater, dedicating many pages to the discussion of "The significant health and safety concerns..." The State Board Order states,

"Given the significant concerns with drinking water safety in the Central Coast Region, we find that any cooperative groundwater monitoring must still characterize drinking water at the level of the individual well if there is a concern that the nitrate concentration in the well may approach the MCL. The cooperative groundwater monitoring provision states that, 'at a minimum, the cooperative groundwater monitoring effort must include sufficient monitoring to identify and evaluate groundwater used for domestic drinking water purposes. The significant health and safety concerns in conjunction with widespread evidence of elevated nitrate levels in the Central Coast Region lead us to the conclusion that identification and evaluation should encompass monitoring of all at risk wells that are used or may be used for drinking water purposes.'" (Page 32)

This excerpt shows State Board's understanding and concern with the very real human health exposure issue associated with unsafe drinking water due to nitrate.

Central Coast Water Board staff disagrees with the Coalition's assertion that providing the notification letter information will provide no greater water quality protection. Central Coast Water Board staff will use the materials to follow up on the provision and adequacy of safe replacement water in addition to ongoing well postings and notification to protect users where the drinking water is unsafe - very real protection from unsafe water quality. Additionally, the Coalition does not mention other scenarios, such as what would become of exceedance information if an individual discontinued Coalition membership, or if the Coalition ceased to exist.

Central Coast Water Board staff also disagrees with the Coalition statement that providing notification letter information will undermine the need for coalitions. While providing notification letter information per the conditions of the approved work plans may conflict with assurances Coalition staff made to membership, many of the benefits of a coalition (cost sharing for sampling, reduced analytical cost, improved data collection quality, technical interpretive work cost sharing, etc.) will continue to make coalitions a likely reality in the future.

The State Board's Order WQ 2013-0101 (State Board's Order) states,

“...we expect the Central Coast Water Board to review proposals carefully to ensure consistency with legal requirements to verify the adequacy and effectiveness of waiver conditions and provide sufficient feedback mechanisms for determination of whether the required controls are achieving the Agricultural Orders stated purposes. However, we also expect the Central Coast Water Board to give fair and due consideration to proposed third party groups in good faith to develop viable alternatives.”

Central Coast Water Board staff has considered numerous data reporting and public access to data proposals from the Coalition over the last 18 months-plus. Many of these Coalition proposals have been approved or are in development, and many of these are substantially different from how data is reported and publicly available for all other Central Coast Water Board-regulated entities, regulatory programs, or growers that conduct individual groundwater monitoring. In light of these facts, the Central Coast Water Board staff have exhibited fairness and provided due consideration to this and other proposals, approaching Coalition proposals open-mindedly. However, the issue covered within this staff report pertains to human health, as significant an issue as the Water Boards deal with, and we must balance our decision-making with respect to privacy against the real human health exposure occurring within the region due to unsafe drinking water and the right to safe drinking water as assured in statute (per Section 106.3[a] of California Water Code).

Coalition comment:

3. The Coalition Complies With Existing Orders and Provides the Central Coast Water Board With Sufficient Feedback: “The Coalition’s current reporting program complies with and is consistent with this new mandate, which was added to the Conditional Waiver by State Board Order WQ 2013-0101. Specifically, CCGC has promptly provided the Central Coast Water Board with exceedance information within 24 hours of receiving and validating groundwater sample results of domestic wells monitored by the CCGC. Further, the CCGC ensures that dischargers are complying with the 10-day notification to users of such domestic wells by promptly notifying its members with such wells within 36 hours of learning about exceedances, by providing its members with explicit direction regarding the need to notify users within 10 days, and by providing its members with notification information for their use that is consistent with directives contained in State Board Order WQ 2013-0101.”

Water Board Staff Response:

The Central Coast Water Board has responsibilities that include:

1. Ensuring beneficial uses are protected (including the municipal and domestic drinking water beneficial use for groundwater),
2. Protecting human health – through notification and well posting, and ultimately, the provision of replacement water

The Central Coast Water Board's cannot delegate this authority to others. However well-intentioned third-party submittals of aggregated, anonymous information are, they cannot serve

as the replacement for a written record or evidentiary-level documentation regarding notification necessary for the Central Coast Water Board to independently evaluate compliance.

Coalition comments:

4. **“Central Coast Water Board Does Not Have the Legal Authority to Request All Individual Notification Letters.** The Executive Officer’s authority for issuing specific conditions and requesting the information identified must be legally based on authority that otherwise exists under the law.” “Since reporting of individual notification letters is *not* required by the Conditional Waiver or State Board Order WQ 2013-0101, we must consider if the Executive Officer has other independent authority to require such information outside of such a requirement being adopted as part of the Conditional Waiver. The CCGC contends that no such authority exists for the requirement to provide individual notification letter as is being requested, and as is included in the December 17, 2013 letter.”

“A letter of notification is not directly related to investigation of water quality and, thus, the Central Coast Water Board has no legal justification under Water Code section 13267 for mandating that such letters be provided as a condition of approval of the CCGC’s work plan.”

Water Board Staff Response:

The Central Coast Water Board staff disagrees with the Coalition’s assertions. The notification letters are directly related to investigations of water quality - unsafe drinking water quality - and these letters are the result of an investigation into unsafe nitrate concentrations in drinking water wells and the subsequent notification of the users drinking the water from those wells. The Executive Officer has the authority to require members of the Coalition to submit the notification letters. Further, as discussed above, the Coalition has a responsibility to submit the notification letters to comply with the conditions of its approved Work Plans.

Coalition comments:

5. **“CCGC’s Understanding of December 17, 2013, Conditions And Sufficiency of Current Reporting Requirements.”** “Based on the tenor of conversation at the time, CCGC representatives understood the term “upon request” to mean that such notification letters could be requested by Central Coast Water Board staff for review and verification, but did not believe that it meant Central Coast Water Board staff could wait several months and then just request all notification letters for no apparent reason. Otherwise, why would staff have included the terms “upon request” after hearing and understanding the Coalition’s concerns, and understanding one of the central tenants of the Coalition’s program includes not providing individual member information that specifically ties domestic well exceedances with individual growers, companies, or landowners in a manner that would then be public.”

“Further, the CCGC fails to see how copies of individual notification letters provide the Central Coast Water Board with any more information than that which is already being provided. At this time, the CCGC provides the Central Coast Water Board with a template of the notification letter, sample results, the date the notification packets are mailed to members, as well as the delivery confirmation date if the well is a domestic well with an exceedance of the nitrate drinking water standard. All of this information combined, along with the ability of staff to review CCGC program documents at any time, clearly provides an appropriate level of reporting that ensures that agricultural order objectives and purposes are being achieved.”

Water Board Staff Response:

Central Coast Water Board staff has been forthcoming in discussing intentions, planned directions, and expectations for the Coalition on this and other issues. As an example, the March 21, 2014 letter details the direction Central Coast water Board staff plans to take with anticipated requirements, and proposes discussing them at a forthcoming March 2014 meeting with the Coalition. Additionally, Central Coast Water Board staff has initiated regularly scheduled meetings with the Coalition to try to improve communication. It is counterproductive to the interests of the Central Coast Water Board to not be forthcoming on the “on demand” component of the Work Plan approval conditions associated with submittal of notification letters. If the Coalition were uncertain or even disapproving of the condition in its Work Plan Approval letters, it should have sent letters and or filed a petition with the State Board.

The Coalition’s states that Central Coast Water Board understood the tenant that no “individual member information specifically tying domestic well exceedances with individual growers, companies, or landowners in a manner” that would be provided to the Water Board or made public. Although this assurance may have been provided during member recruitment, Central Coast Water Board staff has consistently counseled that they cannot agree with the Coalition’s suggested strategy of assuring members complete confidentiality with respect to notification letters and follow up actions. This is documented in the March 21, 2014 letter (Attachment 5, Page 3, Item 1.c).

Responses for the comments pertaining to need for this information are covered in Central Coast Water Board staff responses to Coalition Comments Nos. 2 and 3, above.

Coalition comments:

6. **Direct Grower Information Related to Follow-up Actions.** “...the CCGC does not believe it appropriate or legal for Central Coast Water Board staff to mandate that the CCGC provide” individual grower information related to follow up actions taken if a domestic well had an exceedance of the nitrate drinking water standard. “The December 17, 2013 letter itself only requests that the CCGC provide a summary of follow-up actions taken by its members. Nowhere does the December 17, 2013 letter state that the CCGC must provide a list of individual members with identification of specific follow-up actions taken by individuals. With respect to requiring a list of Coalition members that have not provided follow-up action information or who have not taken follow-up actions, the Coalition contends that release of such information is inappropriate because all of this information is being provided voluntarily. Further, and for the same legal reasons discussed above, there is no legal authority for the Central Coast Water Board to mandate that the CCGC provide this information.”

Water Board Staff Response:

Central Coast Water Board staff does not agree with the Coalition’s assertion that releasing information on members that have taken no action is not required or appropriate. The Work Plan and the Work Plan Approval letters do not require individual grower details on follow up actions. The Central Coast Water Board agrees with the Coalition that all follow up actions are being taken voluntarily, but this does not mean that the Central Coast Water Board cannot obtain a list of individuals in the Coalition that are not undertaking follow up action,

Central Coast Water Board staff responses to comments about our legal authority to mandate the Coalition to provide a list of members who have not provided information to the Coalition on follow up actions taken can be found in Water Board Staff Response to comments Nos. 3 and 4, above.

Coalition comments:“The CCGC’s Proposed Next Steps”

“Even though the CCGC contends that the Central Coast Water Board cannot mandate reporting of the type of information identified, the CCGC does propose the following actions in an effort to cooperate with the Central coast Water Board and to further the purposes and objectives of the agricultural orders.”

7. “The CCGC, as already stated, is willing to provide Central Coast Water Board staff the opportunity to review and audit all information submitted to the CCGC at the CCGC’s home offices, or at another location agreed upon by the parties. Central Coast Water Board staff may not copy or take with them confidential documents, but they may review and audit the documents to verify the authenticity of the information provided to them from the CCGC.”

Water Board Staff Response:

Central Coast Water Board staff does not agree with this suggested action as it is noncompliant with the Coalition’s Approved Work Plan conditions. Additionally, this restricts the Central Coast Water Board staff from ensuring notification and well posting are ongoing, and determining adequacy of replacement water in the future, thereby restricting staff’s ability to ensure protection of human health. If the Central Coast Water Board does decide to proceed with this suggested alternative, the Coalition’s approved Work Plans will need to be amended.

Coalition comments:

8. “The Coalition is willing to add a penalty of perjury statement to all of its submittals to the Central Coast Water Board. Although the CCGC contends that all information submitted is accurate and true to the best of its knowledge, the CCGC is willing to take the extra step and submit information that is currently being reported accompanied with the following statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel or represented Members properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment for violations.”

Water Board Staff Response:

The proposed inclusion of a penalty of perjury statement does not represent an adequate or reasonable substitute for submittal of the notification letters as required under the Work Plan Approval letters, and tells us nothing about the status of replacement water or notification.

Coalition comments:

9. “The CCGC will work directly with the various county health departments to provide them with the appropriate level of information that is needed to ensure protection of public health.”

The Coalition also indicates it will survey its membership to find out if they are willing to have the Coalition convey similar individual information in a table format that identifies individuals only by their Coalition field point name if they are in the north, and by their global

identification number if they are in the south. Examples of the table and format are attached to the Coalition's response letter.

Water Board Staff Response:

Similar to our comment above, these proposed actions do not represent adequate substitutes for submittal of notification letters and a list of dischargers not conducting follow up actions, as required by the Coalition's Work Plans and would not allow the Central Coast Water Board to ensure the adequacy of efforts to protect public health.

Additionally, over the last several years, Central Coast Water Board staff has written letters to each of the county health agencies in the region. The letters notified the county health officers and the directors of the severe groundwater impairments due to nitrate, along with unsafe drinking water conditions encountered in thousands of domestic wells and hundreds of small system wells (comprised of two to fourteen connections), and the lack of widespread public notification to these residents. Response to this effort ranged from nothing to a letter thanking us for the information, but very little in the way of commitment to action. As follow up to this, the former Executive Officer (Roger Briggs) and former Central Coast Water Board Chair (Jeffrey Young) met with representatives from several counties (i.e., county supervisors, county chief executives/executive officers, etc.) to raise awareness and "ensure protection of public health."

Central Coast Water Board appreciates the Coalition's pledge to work with the county health departments, and encourages its staff to follow through with the commitment, regardless of the outcome on the drinking water notification letters.

Central Coast Water Board Staff Analysis:

The documentation required in the Work Plan Approval letter and further outlined in our March 21, 2014 letter will provide necessary transparency and credibility to both the Central Coast Water Board's and the Coalition's notification processes in terms of documenting that timely notification and ongoing and adequate replacement water actions are taking place. The Central Coast Water Board cannot delegate this responsibility to maintain a written record, or its authority to protect public health, to a third party, particularly on an issue as sensitive as safe drinking water. The Central Coast Water Board also cannot rely on anecdotal, aggregated, or anonymous information or records regarding this public health/drinking water issue with respect to providing notification letters. Central Coast Water Board staff must maintain and frequently access appropriate written records, as we currently do in our process for growers that conduct individual groundwater monitoring; this will enable us to follow up with replacement water sites to verify that supply is adequate, both now and in the future as residency/populations change. Additionally, information provided through this documentation will assist Central Coast Water Board staff in identifying and informing domestic well users relying on adjacent domestic wells that are not on properties enrolled under the Ag Order in areas where well water can be reasonably predicted to be unsafe.

Our request for copies of the drinking water exceedance letters and modification of the Coalition's existing drinking water notification protocol, as detailed in our March 21, 2014 letter, is necessary to provide clarity and ensure that our respective drinking water notification protocols are as credible and transparent as possible, given the significance of this human health issue.

The requirement that copies of the individual notification letters sent to coalition members informing them of the exceedance of the drinking water standards be submitted at the request of the Executive Officer is made in accordance with Condition No. 3. of the December 17, 2013 Work Plan Approval letter for the northern counties, and Condition 5.c. of the December 18, 2013 Work Plan Approval letter for the southern counties. These Work Plan approval conditions

authorize the Central Coast Water Board to request copies of the exceedance letters at any time.

Furthermore, our request is consistent with the State Board Order [Part A6, Page 34, 3rd paragraph], which states:

“... The cooperative groundwater monitoring program must report results consistent with individual groundwater reporting defined in part 2.B, or report results in a manner that is consistent with that approved by the Executive Officer in his or her approval of the cooperative groundwater monitoring proposal.”

This paragraph indicates that drinking water exceedance reports must be reported in a manner that is consistent with (or equivalent to) the reporting protocol for either the individual exceedance notification protocol or as approved by the Executive Officer (i.e. the approved Work Plans). Consistent with the direction of the Central Coast Water Board at its January 30, 2014 Board meeting, staff's actions have been to align these two notification protocols. When the Coalition complies with the requirements of the Work Plan Approval letters and the guidance in the March 21, 2014 letter, these notification protocols will be equitable and aligned.

Also from the State Board's Order, Part A.7, Page 34, 1st paragraph, was amended as follows:

7. “If a discharger conducting individual groundwater monitoring or a third party conducting cooperative groundwater monitoring determines that water in any well that is used or may be used for drinking water exceeds or is projected to exceed 45 mg/L of nitrate as NO₃ (or 10mg/L of nitrate + nitrite as N), the discharger or third party must provide notice to the Central Coast Water Board within 24 hours of learning of the exceedance or projected exceedance. For wells on a Discharger's farm/ranch, the Central Coast Water Board will require that the Discharger notify the users within 10 days. For all other wells, the Central Coast Water Board will notify the users promptly.”

Recognizing the potential severity and urgency of the health issues associated with drinking groundwater containing unsafe concentrations of nitrate, we must require that the Coalition notify us when a well is identified as exceeding the MCL for nitrate, and that the Discharger (growers) notify users of the well in a timely manner. Considering that the Coalition is functioning as an intermediary on behalf of the Dischargers, it is the Coalition's responsibility to provide “appropriate verification” that the users of the well have been properly notified to the satisfaction of the Executive Officer as defined in the Work Plan Approval letters. The Work Plan Approval letters provide requirements and the March 21, 2014 letter provides requested changes to the Coalition's drinking water notification, documentation, and reporting process. Compliance with these provides both documentation and confidence that all appropriate initial actions have been taken to protect public health for wells with drinking water exceedances, as required by State Board Order WQ-2013-0101. Additionally, implementation of these changes will ensure that the Coalition's drinking water notification process is consistent with the notification process that is presently followed by the Central Coast Water Board staff for growers who individually comply with groundwater monitoring requirements, in addition to complying with the direction provided by the Water Board itself in January 2014.

The Cost of Re-Debating Issues and Lower Transparency:

Over the last six months, the Central Coast Water Board, its staff, representatives from the Coalition, and staff from environmental and environmental justice groups have re-debated several issues that were previously decided by the Executive Officer under his existing authority. Some recent examples of issues include:

- Sampling schedule for Coalition groundwater monitoring,

- Groundwater monitoring analytical parameters required in the monitoring and reporting program (MRP);
- Appropriate blurring of well locations; and most recently
- Reporting of notification information associated for Coalition members' domestic wells that provide unsafe drinking water.

Each of these items had previously been resolved, although the outcome was not to the satisfaction of the Coalition. This re-debating of issues is enormously inefficient from a business perspective, drawing resources away from the jobs of implementing the order and restoring water quality and beneficial uses.

Much of the re-debating has focused on reducing availability of information provided to the Central Coast Water Board and/or the public. This effort towards reducing information transparency/availability has added significantly to the time draw on resources from all sides of this discussion. In addition to the inefficiency outlined above, because of this shift towards reduced information transparency/availability, substantial Central Coast Water Board staff time, otherwise dedicated toward dealing with unsafe domestic drinking water wells, goes toward responding to the frequent Public Records Act Requests (PRARs) either in crafting response letters or in evaluating emails, letters, and other documents to determine if the documents 1) are responsive to the PRARs and at the same time, 2) comply with the privacy rules we have created for data specific to agriculture in general and/or the Coalition.

Creating a lower information transparency/availability program for the Coalition reflects Central Coast Water Board staff's willingness to work open-mindedly with the Coalition, but has proven very costly in terms of staff resources spent on working through PRARs, preparing for Board meetings to re-debate issues, and in developing records privacy protocols that differ from how we handle all other dischargers (i.e., oil companies, industrial facilities and spills, landfills, wastewater treatment plants, small businesses such as dry cleaners, gas stations, etc.). In these other types of businesses, dischargers do not have unique rules providing diminished access to records for either the Central Coast Water Board staff or the public beyond that which is provided for drinking water well locations. Creating special rules for a subgroup (i.e., Coalition members) within any specific industry, or within the regulated community as a whole, initiates a number of imbalances in the playing field for those electing individual groundwater monitoring, as well as raising a fairness issue for those other entities regulated by the Central Coast Water Board.

Additionally, at the time of the Agricultural Order adoption, one of the reasons given for supporting a coalition option was that this would save Central Coast Water Board staff time. The Coalition's June 10, 2014 letter reiterates this point, stating,

“All the work done by the CCGC benefits the Central Coast Water Board, and allows the Central Coast Water Board to focus its limited staff resources on individuals that are not participating in the CCGC's cooperative monitoring program. This provides the Central Coast Water Board with a significant advantage in managing its workload.”

Recognizing the previously stated benefits of a coalition and the work this Coalition has completed to date, the workload savings to the Central Coast Water Board has not been realized. On the contrary, interacting with the Coalition has proven far more expensive in terms of Central Coast Water Board staff time than comparable individual monitoring for the same requirements. Central Coast Water Board staff hopes that at some point in the future, management of the Coalition work will become as or more efficient with respect to Central

Coast Water Board staff resources as that spent on growers conducting individual groundwater monitoring.

To provide a framework for understanding distribution of groundwater monitoring in this discussion of Central Coast Water Board staff efficiency, the following table shows the number of wells sampled by individuals and by coalitions in each county within the region. Central Coast Water Board ran this report in late June, and it should be noted that we expect the number of wells in the “Coalition” row to increase for some of the counties as sampling continues in these areas.

County	Total Wells	Monterey	San Luis Obispo	Santa Barbara	San Benito	Santa Cruz	Santa Clara	Ventura
Total Wells	2746	564	1090	661	144	143	138	6
Individual Monitoring	1822	365	891	313	106	89	55	3
Coalition*	924	199	199	348	38	54	83	3

* Data Provided by Coalition on July 15, 2014.

While the table above shows that individual monitoring comprises approximately sixty-six percent (66%) of the total wells sampled, staff resources expended on growers electing individual monitoring is much less than expended on the Coalition for the reasons described above.

In the next iteration of the Agricultural Order, Central Coast Water Board staff will likely recommend that a significant amount of information associated with the Irrigated Lands Regulatory Program, including groundwater quality information, be publicly available via GeoTracker or other online access method consistent with other regulatory programs (i.e., underground storage tanks, land disposal, site cleanup program, etc.) including retaining appropriate blurring of well locations.

CONCLUSION

The Central Coast Water Board staff cannot confirm to the Central Coast Water Board that notification of unsafe drinking water has occurred and replacement water has and continues to be provided in adequate quantities if they do not have reasonable access to the notification information, consistent with the State Water Board’s order, the expressed direction of the Central Coast Water Board, and the Work Plans approved through the December 17, 2013 and December 18, 2013 letters. The Coalition suggests that the Executive Officer does not have the authority to require the notification documentation; however, the Coalition did not express that opinion, nor challenge the requirement via the review process to the Central Coast Water Board, for either of the two Work Plan Approval letters.

Privacy is something to be respected and fairly considered, but in the State of California,

“It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption...” (Section 106.3(a) of the California Water Code).

The subsequent Section 106.3(b) states:

“All relevant state agencies, including the department, state board, and the State Department of Public Health, shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water described in this section.”

The information required under the Work Plan Approval letters helps to both 1) ensure this right is being met by providing reasonable access to information necessary for Central Coast Water Board staff to provide proof that notification has taken place and adequate documentation to conduct follow up determination of ongoing provision of replacement water in the future, and 2) provide information for those that depend on drinking water from wells that are not a part of the coalition’s membership in areas where it is reasonable to assume groundwater is unsafe to drink. The Central Coast Water Board staff’s obligations to ensure this right supersede the desire or the Coalition’s promise to provide privacy in this case.

Central Coast Water Board staff resources are limited and best spent on implementation of the Irrigated Lands Regulatory Program and not on the re-negotiating and reporting on these issues. The existing Work Plan Approval conditions were discussed and negotiated prior to final work plan approval. It is not appropriate or necessary to change the approval conditions in the middle of the implementation phase. Furthermore, the notification process currently used for growers that conduct individual groundwater monitoring is well established and working well and efficiently. As mentioned, at the time of this writing, Central Coast Water Board staff has issued over 102 drinking water notification letters to growers that conduct individual groundwater monitoring and the vast majority responded promptly and provided the necessary information. A copy of our notification template letter for growers conducting individual groundwater monitoring with domestic wells that exceed the nitrate MCL is attached for your reference (**Attachment 4**).

SUMMARY FOR 13B – ADDRESSING CRLA’S LETTER

The purpose of this item is to provide Central Coast Water Board review, as requested in a July 3, 2014 correspondence submitted by the California Rural Legal Assistance, Inc. (CRLA) (**Attachment 6**). Specifically, the CRLA letter requests discretionary review from the Central Coast Water Board with regards to two aspects of the Central Coast Groundwater Coalition’s (Coalition) groundwater monitoring program:

- 1) The Coalition’s notification process for wells that have exceeded the nitrate Maximum Contaminant Level (MCL), and;
- 2) The manner in which the groundwater testing results of the Coalition will be disclosed to the public.

The Central Coast Water Board is reviewing the first aspect of CRLA’s request in this item and the second aspect will be reviewed at a later date, likely the November 2014 Central Coast Water Board meeting.

This staff report presents Central Coast Water Board staff’s evaluation and recommendation concerning CRLA’s letter and associated requests. Central Coast Water Board staff recommends **No change to existing Work Plan approval conditions, and to require the Coalition to make its reporting of drinking water exceedances and associated follow up equivalent to the Water Board’s notification process for growers that conduct individual monitoring and have domestic well nitrate exceedances.** The rationale for staff’s recommendation is included below.

DISCUSSION

Following is a brief discussion of CRLA's specific reasons for requesting the alignment of the Coalition's drinking water notification process with Central Coast Water Board's individual monitoring notification process.

CRLA Comments:

The CRLA letter includes the following statements concerning the Coalition's approved work plan and drinking water notification process:

"This notification process is insufficient for two reasons:

- 1) The workplan does not affirmatively require any confirmation that users have been notified that the groundwater from their well is unfit for human consumption, and;
- 2) The notification process does not affirmatively inform the Regional Board staff of particular wells that contain nitrate MCL exceedances."

The CRLA letter requests that the Central Coast Water Board ensure that the Coalition's Drinking Water Notification Process is equivalent to the notification process that the Central Coast Water Board implements for individual dischargers.

The CRLA letter states,

"We request that the Board review the coalition's notification process for its members to ensure that their notification procedure contains a written confirmation component by which the Regional Board can hold the coalition accountable for the work it lays out within their workplan."

"The Regional Board can only ascertain if CCGC notification is effective or not only if the Board receives written confirmation that both the grower and all users of the water supply are informed of nitrate exceedance."

"...it remains critical that the notification process implemented by CCGC be as robust as the notification process implemented by the Regional Board Staff."

Furthermore, CRLA also requests that Central Coast Water Board ensure that the Coalition informs the Central Coast Water Board of the particular wells that have an exceedance.

The CRLA letter states,

"The coalition currently does not notify the Regional Board of the specific wells which have nitrate exceedances above the MCL. This is a serious deficiency. According to coalition presentations, the coalition only provides a summary table of wells tested that exceed the nitrate MCL but fails to provide information regarding which wells specifically exceed the drinking water standard."

"If the Regional Board cannot discern which wells have specific nitrate exceedance in the way that it can under the individual monitoring program, how can the Regional Board properly assess priority areas of known nitrate contamination of drinking water wells?"

"The coalition must bring its notification process into alignment with the individual monitoring program with regards to its notification method to members and well users, and also to the Regional Board itself."

Central Coast Water Board Response:

Based on staff's evaluation of CRLA's specific request concerning the Coalition's drinking water notification process, Central Coast Water Board staff agrees with CRLA's contention that the Central Coast Water Board needs confirmation of the notification letters in order to ensure that public health is protected – which is the same process that we use for dischargers conducting individual monitoring.

The first portion of this staff report, referenced as 13A, addresses Central Coast Water Board staff's evaluation and includes detailed responses to comments regarding aligning of drinking water notification processes and identifying exceedance well locations. Detailed responses concerning the alignment of drinking water notification processes and well location disclosure issues can be found in Water Board Staff Responses to comments Nos. 2 and 3 to part 13A of this item, above.

RECOMMENDATION FOR ITEM 13

Central Coast Water Board staff recommends **No change to the existing Work Plan approval conditions, and to require the Coalition to make their reporting of drinking water exceedances and associated follow up equivalent to the process for growers conducting individual groundwater monitoring, as outlined in our March 21, 2014 letter.**

The Work Plan approval conditions authorize the Central Coast Water Board to request copies of the individual exceedance letters in order to confirm that the Coalition members have notified the well users of unsafe drinking water, as well as to allow verification that replacement water is adequate and continues to be so in the future. Finally, it is our understanding that if Central Coast Water Board directs staff to deviate from the present Work Plan approval conditions, this would require a modification to the Work Plan approval letter (i.e., re-issuance of a revised approval letter). Central Coast Water Board staff recommends against this direction for the reasons stated above in 13A and 13B.

ATTACHMENTS

- Attachment 1 - Central Coast Groundwater Coalition's June 10, 2014 letter
- Attachment 2 - Central Coast Water Board's Conditioned Work Plan Approval letter to the Coalition, dated December 17, 2013 for the Northern Counties
- Attachment 3 - Central Coast Water Board's Conditioned Work Plan Approval letter to the Coalition, dated December 18, 2013 for the Southern Counties
- Attachment 4 - Central Coast Water Board's Drinking Water Notification Template
- Attachment 5 - Central Coast Water Board's March 21, 2014 Notification Guidance letter to the Coalition
- Attachment 6 - California Rural Legal Assistance, Inc. (CRLA's) July 3, 2014 letter